

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

**NOTICE OF MOTION NO.3228 OF 2007
IN
SUIT NO.2428 OF 2007**

Pankaj Golecha & Anr. ...Plaintiffs.

Versus

Ansal Housing and Construction Ltd. ...Defendant.

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Mr. Pratik Sakseria with Mr. Jay Kansara i/b. M/s.Paras Kuhad and
Asso. for the Plaintiffs.

Mr. V. A. Thorat, Senior Advocate with S. Dutta and Mr.Shailesh Dala
i/b. Dalal & Co for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

December 19, 2007.

P.C.:

By consent, the Notice of Motion has been taken up for
hearing and final disposal since pleadings of all the parties are
complete.

The suit is for specific performance of an agreement for the
allotment of Flat No.A-1301 situated in Wing-A of a building known as

Ansal Heights. Prior to the institution of the present suit on 5th May 2007, the Plaintiffs had instituted a suit before the City Civil Court being Short Cause Suit No.1774 of 2006 together with a group of ten allottees. The Notice of Motion therein was dismissed by an order of the Learned Trial Judge dated 6th December 2006. While dismissing the Notice of Motion, the Learned Trial Judge came to the conclusion that the Plaintiffs were not ready and willing to pay the money demanded under the agreement. That apart, the Court also noted that the Plaintiffs herein like the other Plaintiffs had wrongly described the flat and though it had been stated that the plaint would be amended, that had not been done. After the order was passed by the City Civil Court declining interim relief, Learned Counsel appearing for the Plaintiffs applied for the withdrawal of the suit in the City Civil Court. The suit was withdrawn before the City Civil Court on 24th April 2007 after which the present suit has been instituted.

From the materials which have been placed on the record, it would appear prima facie that the agreement of allotment was

terminated by a letter dated 15th December 2006 after the Plaintiffs had failed to show their readiness and willingness by making payment of the instalments towards the purchase price demanded upon the progress of the construction. The letters on record, of the Defendant are dated 23rd August 2004, 15th October 2004, 1st April 2005, 28th May 2005 and 10th August 2005. Before the City Civil Court, the Defendant had shown its readiness to enter into an agreement with the Plaintiffs provided the agreed consideration of Rs.56 lakhs was paid in respect of Flat No.B-1301, subject to the payment of interest on the delayed payment. This was not acceptable to the Plaintiffs. In the meantime, it has now been stated before the Court on affidavit that third party rights have been created by the Defendant in respect of Flat No.B-1301 on 15th April 2007. The entire payment is stated to have been made by cheque and the cheques, it is stated, have been duly encashed. In the circumstances, no prima facie case for the grant of interlocutory relief has been made out since it has not been established prima facie that the Plaintiffs were ready and willing to perform their part of the agreement.

The Notice of Motion is dismissed.